

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KENNETH L. FAULKNER, JR.,

Plaintiff,

v.

KEN PHILLIPS ET AL.,

Defendants.

Case No. 16-cv-0063 DMS (WVG)

**ORDER (1) ADOPTING REPORT
AND RECOMMENDATION (2)
GRANTING MOTION FOR
SUMMARY JUDGMENT AND (3)
GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS**

On January 8, 2016, Plaintiff Kenneth L. Faulkner, Jr., a state prisoner proceeding *pro se*, filed a Complaint pursuant to 42 U.S.C. § 1983. On July 11, 2016, Defendants filed a motion to dismiss, and Defendants Buck and Farias also filed a motion for summary judgment.

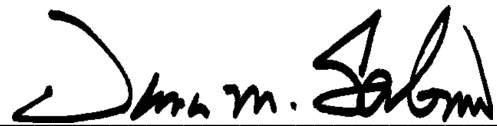
On December 2, 2016, Magistrate Judge William V. Gallo issued a Report and Recommendation (“R&R”), recommending that the Court grant the motion for summary judgment for failure to exhaust administrative remedies, and grant in part and deny in part the motion to dismiss. Specifically, the Magistrate Judge recommended the Court grant the motion to dismiss Plaintiff’s official capacity and injunctive relief claims against all Defendants and qualified immunity claims against Defendants Buck and Farias, and deny the motion insofar as it argues Plaintiff’s claims arising out of the disciplinary hearing are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994).

1 The deadline for filing objections was December 28, 2016. No objections
2 were filed, and neither party has requested additional time to do so. Consequently,
3 the Court may adopt the R&R on that basis alone. *See United States v. Reyna-Tapia*,
4 328 F.3d 1114, 1121 (9th Cir. 2003). Nevertheless, having reviewed *de novo* the
5 Magistrate Judge's R&R, this Court adopts the R&R in its entirety. Defendants
6 Buck and Farias's motion for summary judgment is granted. Because the Court
7 grants their motion for summary judgment, the motion to dismiss is denied as moot
8 as to Defendants Buck and Farias, but granted as to Defendants Phillips and Posner.

9 Because Plaintiff's individual capacity claims against Defendants Posner and
10 Phillips remain pending, pursuant to Federal Rule of Civil Procedure 12(a)(1)(C),
11 Defendants Phillips and Posner shall file their Answer to the Complaint within 21
12 days of the filing of this Order.

13 **IT IS SO ORDERED.**

14 Dated: January 11, 2017



The Honorable Dana M. Sabraw
United States District Judge